

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**IN RE: BLUE CROSS BLUE SHIELD)
ANTITRUST LITIGATION)
(MDL NO. 2406))
_____)**

Master File No.: 2:13-CV-20000-RDP

RESPONSE IN SUPPORT OF MOTION TO AMEND JUDGMENT

The Alaska Air and Jet Blue National Account ASO Opt-Outs¹ together with all their parents, subsidiaries, affiliates, and associated benefit plans (collectively “the Alaska Air Group”) who validly excluded themselves from the Settlement Class, hereby submits this response in support of Home Depot’s Motion [Doc. # 2941] under Federal Rule of Civil Procedure 60(a) to correct the Settlement Administrator’s report [Doc. # 2928].²

The Court’s Final Approval Order provides the “Opt-Outs identified in Document #2928 [the Declaration of Jennifer Keough and the Settlement Administrator’s report] are EXCLUDED from the Damages Class.” Doc. # 2931, at p. 87. Thus, the Court’s final approval order, perhaps inadvertently, arguably establishes that the Settlement Administrator’s list is the sole determiner of whether one opted out. But, the Settlement Administrator’s report contains indisputable errors. This is demonstrated not only by the missing entities identified in Home Depot’s motion, but also by the missing entities from the Alaska Air Group identified in Exhibit A, attached hereto, and the opt out notices included as a part of that exhibit.³

¹ The Alaska Air National Account ASO opt-outs are the plaintiffs in *Alaska Air Group, Inc., et al. v. Anthem, Inc., et al.*, 2:21-cv-01209-AMM (N.D. Ala.). The JetBlue National Account ASO opt-outs are the plaintiffs in *JetBlue Airways Corporation, et al. v. Anthem, Inc., et al.*, 2:22-cv-00558-GMB (N.D. Ala.).

² Document 2928 lists the Settlement Class members who submitted valid exclusion requests, as compiled by the Settlement Administrator.

³ In material part the Alaska Air Group is supporting the correction of the Settlement Administrator’s list in a belt and suspenders effort to avoid any unnecessary and wasteful dispute over the ownership of the claims asserted in their complaints.

Relief is warranted from the Settlement Administrator's omissions and other scrivener's errors because "considerable flexibility is desirable in determining what constitutes an effective expression of a class member's desire to exclude himself and any written evidence of it should suffice." *In re Four Seasons Sec. Laws Litig.*, 493 F.2d 1288, 1291 (10th Cir. 1974). *See also In re TFT-LCD (Flat Panel) Antitrust Litig.*, 37 F. Supp. 3d 1102, 1106 (N.D. Cal. 2014) (finding that eMachines had opted out of a class settlement even though it was "not mentioned by name" in the opt out letter but was "owned and controlled entirely by" an entity that had validly opted out); *In re Linerboard Antitrust Litig.*, 223 F.R.D. 357, 365 (E.D. Pa. 2004) (insisting on more than a "reasonable indication" to opt out would infringe on the Due Process opt-out right identified in *Phillips Petroleum v. Shutts*, 472 U.S. 797, 812 (1985)); *Plummer v. Chemical Bank*, 668 F.2d 654, 657 n.2 (2d Cir. 1982) ("Any reasonable indication of a desire to opt out should suffice."). Accordingly, the errors in the Settlement Administrator's report [Doc. # 2928] should be addressed.

While the Alaska Air Group supports the remedy sought by Home Depot, we believe that the surest way to avoid later disputes and efficiently and effectively resolve this matter is for the Court, in the exercise of its discretion, to direct the Settlement Administrator to amend its report to include all of the entities identified in Exhibit A attached to this Response, along with the entities identified in Home Depot's motion.⁴

⁴ On September 15, 2022, undersigned counsel for the Alaska Air Group held a meet and confer with Defendants' counsel on this issue and have not reached full resolution.

September 16, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2022, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Benjamin T. Presley

Benjamin T. Presley (ASB-0136-i71p)